

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Tel. 22163964/65/69 Fax 221639765
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 3 of 2008

In the matter of
Complaint filed by Maharashtra Electricity Consumers Association seeking penal action
against MSEDCL for charging of service connection for underground connection instead
of charging of service charges for over head connection

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Maharashtra Electricity Consumers Association
Regd. Office H.No. 27, Pall's Comp.
Kalyan Road, Bhiwandi 421 302,
Dist. Thane

... Complainant

Versus

Maharashtra State Electricity Distribution Co. Ltd.,
5th Floor, Prakashgad, Bandra (East),
Mumbai – 400 051.

... Opponent

ORDER

Dated: July 16, 2008

Maharashtra Electricity Consumers Association (“MECA”) filed a complaint on January 23, 2008 alleging that Maharashtra State Electricity Distribution Company Limited (MSEDCL), Bhiwandi Circle has charged service connection for underground connection instead of charging service charges for overhead connection against the prescribed norms of MSEDCL in its Commercial Circular No.43 dated September 7, 2006 although no underground service connection was available in Bhiwandi. The Complainant further stated that:

(a) There was no underground connection in Bhiwandi and only overhead connection was available and that this matter was brought to the notice of MSEDCL, Bhiwandi vide Complainant’s letter No. MECA/33 dated May 17, 2007 addressed to the Nodal Officer, MSEDCL Bhiwandi.



(b) However, no action was taken by MSEDCL in this matter which amounted to total non-compliance of the Commission's directives contained in the Order dated September 8, 2006 in Case No.70 of 2005 in the matter of MSEDCL Schedule of Charges and the Electricity (Supply) Act, 1948 as amended by the Electricity [Laws] Amendment Act, 1998 with Electricity Regulatory Commissions Act 1998 vide sections 44 and 45.

2. The Complainant has sought the following reliefs:

"1] Extra charges collected on account of underground charges instead of overhead charges should be refunded to the consumers

2] Applicable action should be taken against the utility of Bhiwandi Circle"

3. The Complainant stated in its letter dated March 2, 2008 that:

(a) the said complaint was filed under Sections 142 and 149 of the Electricity Act, 2003 ("EA 2003");

and

(b) non-compliance of Commission's directives contained in Commission's Order dated September 8, 2006 in Case No.70 of 2005 in the matter of approval of MSEDCL Schedule of Charges was the reason why the Commission should admit the complaint.

4. MSEDCL filed its reply stating as under:

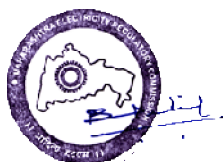
(a) Billing disputes ought to be referred to and considered by the Consumer Grievance Redressal Forum (CGRF) under Section 42 of the EA 2003 and therefore, the present complaint was not maintainable;

(b) The Complainant had no *locus standi* as the complainant had no authority given by the consumers to file the said complaint;

(c) All allegations made in the complaint shall be deemed to be denied by MSEDCL. Torrent Power Limited (the distribution franchisee) submitted its letter dated May 14, 2008 to MSEDCL, Bhiwandi (Annexure 1 to MSEDCL's reply) stating that substantial amount of underground cabling work has been achieved by Torrent Power Ltd., in order to reduce T&D losses, Distribution Transformer failure rate, etc., and therefore, the contentions raised by the aggrieved consumers are not correct.

(d) Under the provisions of the EA 2003, MSEDCL appointed Torrent Power Limited as a Distribution Franchisee for Bhiwandi Distribution Circle, where MSEDCL is the distribution licensee. Pursuant to the said complaint being served upon MSEDCL, a meeting was held between MSEDCL and the representatives of Torrent Power Limited on May 13, 2008. On the basis of the records produced by Torrent Power Limited, MSEDCL was dealing in the present matter;

(e) Shri. Shaikh Ashhad Jamal Ziauddin, a consumer whose name was shown in the said complaint had applied for a new connection for lighting and power loom. The connections were released to the consumer for his premises under consumer no.13215004354 (for single



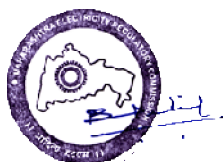
phase) and 13215004346 (for three phase). As a drain prevented the underground cabling from the junction box to the consumer's meter, it was essential to provide the overhead line from the junction box to the meter of the consumer. The cable used from the junction box to the meter was the same as which was meant for the underground cabling. The consumer was satisfied with this arrangement and neither did he lodge any complaint nor did he ask for refund for not providing underground cabling from the junction box to his meter;

(f) Shri Siddiqui Shakeel Ahmed Abdul Gaffar, the second consumer, whose name was mentioned in the Petition had applied for a new connection for lighting and power loom, which was released to the consumer for his premises under consumer no.13013016024 (for single phase) and 13013016016 (for three phase). As a private road crossing prevented the underground cabling from the junction box to the second consumer's meter, it was essential to provide the overhead line from the junction box to the meter of the second consumer. The cable used from the junction box to the meter was the same as which was meant for the underground cabling. The consumer was satisfied with this arrangement and neither did he lodge any complaint nor did he ask for refund for not providing underground cabling from the junction box to his meter;

(g) The abovementioned two consumers were provided new electricity connections by taking utmost care and precaution and practicality of the site situation while laying the cables (overhead or underground) by best possible means;

(h) There was no willful dis-obedience/ breach of Order dated September 8, 2006 passed by the Commission in Case No.70 of 2006 and that the complaint be dismissed with costs.

5. An admissibility hearing was held on May 21, 2008. The Complainant submitted that the present proceedings had been instituted under Sections 142 and 149 of the EA 2003. The Commission observed that issues relating to the proceedings should have been tried before the appropriate CGRF. The Commission enquired with the representatives present on behalf of MSEDCL as to why appropriate directions were not given to the aggrieved consumers to present their cases before the concerned CGRF. MSEDCL submitted that the present complaint was not maintainable under Sections 142 and 149 of the EA 2003. It was submitted that the Complainant had preferred the present complaint to represent certain aggrieved consumers and that a complaint proceeding could not be instituted through representation. MSEDCL submitted that consumers who were aggrieved should have directly approached a judicial forum to institute complaint proceedings and should not have empowered the Complainant to take steps in a representative capacity. It was further submitted that the Complainant had not specifically submitted details / particulars of the aggrieved consumers who were being represented, which was essential in proceedings where penal provisions of law were sought to be invoked. It was submitted that the Hon'ble High Court of Judicature at Bombay had passed directives in one case requiring a public interest litigant to disclose full particulars of parties to the litigation. Furthermore, the present proceedings were liable to be rejected due to the existence of an alternative remedy, being the remedy under Section 42(5) of the EA 2003 to approach the CGRFs. It was further submitted that aspects relating as to whether cables for providing connection should be laid underground or constructed overhead, could not be agitated before the Commission.



6. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the present case cannot be proceeded with before the Commission as the grievance as such can be represented before the consumer grievance redressal forums constituted by MSEDCL under Section 42(5) of the EA 2003. It is relevant to point out to sub-sections (5), (6), (7) and (8) of Section 42, as under:

“(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

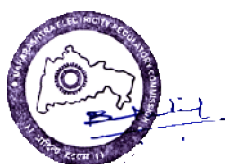
(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.”

Pursuant to the above, the Commission has notified the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, whereunder a consumer can file his / her grievance before the CGRFs established by the concerned distribution licensee (MSEDCL, in this case). Grievance under the said regulations means, as under:

“Grievance” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”

7. It is the contention of the Complainant that MSEDCL has issued bills to certain consumers which bills are not in accordance with the Commission’s Order dated September 8, 2006 passed in Case No. 70 of 2005 in the matter of approval of MSEDCL’s Schedule of Charges. It is clarified that the CGRF’s are empowered to decide the present case in which the grievance is arising out of the Commission’s Order dated September 8, 2006 passed in Case No. 70 of 2005 in the matter of approval of MSEDCL’s Schedule of Charges since the very definition of the term “Grievance” in the aforesaid regulations includes within its ambit *“(b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”* It is clarified that in a case where the issue is as to whether the bills raised



by the utility is not in compliance with the order(s) passed by the Commission such case(s) will be within the jurisdiction of the Forum or Ombudsman, as the case may be. All such contentions to be raised by the aggrieved consumers shall be open before the concerned CGR Forum. Accordingly, the aggrieved consumers who are represented herein by Maharashtra Electricity Consumers Association, may file their grievances before the concerned CGRFs of MSEDCL. The Commission would not have jurisdiction to admit and entertain this case.

In view of the above, Case No. 3 of 2008 stands dismissed.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC